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SUBJECT Disclosing Classified Information

PRESIDENT RONALD REAGAN: I was going to have an opening statement, but I decided that what I was going to say I wanted to get a lot of attention, so I'm going to wait and leak it.

SANFORD UNGAR: President Reagan joked about leaks during a news conference in early 1982. But in private, according to his aides, he's more angry than amused. And his anger has led him to issue a new executive order putting controls on people who work for the government and those who leave and write and lecture about their experience. That order has, in turn, caused a furor.

This is NPR Dateline. I'm Sanford Ungar.

The executive order signed by Mr. Reagan last month requires federal employees with a security clearance to sign a pledge to follow the rules and to submit to polygraph examinations if asked to do so. But a more important and more sweeping provision says that all those who hold the highest kind of security clearance must, after leaving government, submit their writings and lectures for review by the agency where they worked.

President Reagan's complaint is no different from those of several other recent Presidents.

RICHARD WILLARD: It is a major problem. The Justice Department receives a large number of referrals every year from agencies that have had their classified information disclosed in the media, mostly, they think, because one of their employees or another government employee has, without authorization, passed it along.

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UNGAR: Richard Willard is a Deputy Assistant Attorney General. Speaking for the Justice Department, he explained why the President took such a severe step.

WILLARD: The purpose of the directive was to strengthen our ability to enforce existing laws that make it improper, or criminal in some cases, for government employees to disclose classified information to the public.

UNGAR: You say criminal in some cases. As I understand it, there's never been a successful criminal prosecution for the disclosure of classified information.

WILLARD: That's right. For a variety of reasons, these cases are hard to solve, and even harder to prosecute before a jury. For example, you may have to declassify some extra information in order to make out a case. And so...

UNGAR: It's like throwing out the baby with the bathwater, in some instances.

WILLARD: Sometimes it is.

Therefore, the President's directive puts most of its emphasis on administrative sanctions.

UNGAR: So this is an attempt to deter rather than to prosecute. Is that it?

WILLARD: Well, to deter; or, in cases where people are caught, to use administrative sanctions, such as denying people access to classified information in the future; or, in a severe case, firing them from their jobs.

UNGAR: There's an old complaint, of course, that so much is classified, so much more is classified than ought to be classified, that, in a way, some of these disclosures are really just sort of almost the free market's way of adjusting the system.

WILLARD: Some of the disclosures, in truth, are not that serious, and we would not expect them to be investigated, under this directive. But there are plenty of disclosures that are serious, and those are the ones that we're interested in in investigating and trying to solve.

UNGAR: How do you imagine this would work? I mean it sounds like it's a mammoth task to undertake.

WILLARD: It is a big job, but we think it's worth the effort to make sure that people don't accidentally let important

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classified information out.

Past high-ranking government officials have voluntarily submitted manuscripts for review, including Kissinger and Brzezinski, who submitted portions of their manuscripts. Former Secretary of State Cyrus Vance has submitted his manuscript. Former Attorney General Griffin Bell submitted portions of his manuscript for review.

It's been happening before, but this directive will formalize the process.

UNGAR: Deputy Assistant Attorney General Richard Willard.

The effort to control the writings and utterances of former government officials has drawn strong objections from the journalistic and academic worlds. One of the harshest protests is from Anthony Lewis, a columnist for the New York Times.

ANTHONY LEWIS: I think I have two objections, Sandy, one of a legal-philosophical character and another practical one. Let me take the practical one first.

We have relied increasingly in this country on former high officials of the United States Government to bring some light to the secret operations of that government. And people like Mac Bundy or Zbig Brzezinski, Henry Kissinger, former Secretaries of State, they all write their memoirs and perform a very useful democratic function of throwing light on dark corners of the national security state. This executive order would put a very severe crimp in their ability to do that. Everything they wrote would first have to be approved. And it's not just books, of course. You consider that this very week, Mac Bundy wrote a very powerful piece on the MX for the New York Times op-ed page. If he were covered by the order -- it doesn't go backwards, but all people like him are covered now and will be in the future. And that sort of person could not write an article for the New York Times without clearance first. Indeed, he'd have to phone the editor and say, "I want to write an article."

The editor said, "What are you going to say?"

He'd have to reply, "I can't tell you till it's been cleared." A very severe hindrance. I think most people wouldn't bother trying under those circumstances.

UNGAR: Do you think that -- I mean speaking in practical terms, do you think that the government would really have the capacity to vet the thoughts and the writings and the speeches and every word from so many people who've served in the

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government. It seems there's a practical problem. It seems virtually unenforceable.

LEWIS: Well, I wouldn't say unenforceable. I agreed with every word you said up till then. I think what will happen is simply an enormous backlog of people who want to say things and are not able to. The dangers of saying it without waiting for this cumbersome process could be great. After all, Frank Snepp had his entire income for three years taken from him, $140,000. And he and Victor Marchetti are under lifetime injunctions which, if they violate them, could result in going to prison for contempt. These are serious inhibitory matters.

UNGAR: What about your other objections to...

LEWIS: Well, my other objection is this: I have this fundamental belief that laws in the United States, statutes should be passed by Congress, through the procedure established by the Constitution. That's what the Supreme Court said in no uncertain terms when Harry Truman tried to seize the steel mills back in 1952 to head off a strike during a wartime emergency. The court said, emergency or not, it's Congress that makes the laws in this country. You can't do that unless there's a law.

Now, here's a situation in which Congress has never passed any law setting up such a system. And the Executive Branch, on its own, without hearings, without any kind of process, in secret, adopts what amounts to an American Official Secrets Act. I just think everybody who cares about the constitutional system should be outraged by that shortcutting of a process of making law.

UNGAR: New York Times columnist Anthony Lewis.

RALPH MCGEHEE: This new executive order. Those people in the government will now lose their First Amendment rights to speak out. I feel I have lost my right to speak out.

UNGAR: Ralph McGehee speaks from experience. He has just published a book dealing with his 25 years in the Central Intelligence Agency. The CIA already has rules of the sort President Reagan now wants to extend throughout government, and McGehee ran up against them as soon as he completed the first draft of his manuscript.

MCGEHEE: I submitted it to the agency. And after the 30-day, mandatory 30-day period, they came back and said there are 397 deletions. It was determined, over a period of negotiations for the next 46 days, that most of those deletions were invalid, that I could prove that the information had been approved for other people.

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UNGAR: What sort of information were they wanting you to delete?

MCGEHEE: Well, the primary deletion was the fact that the CIA worked in liaison with the Thai police. I had spent six years in Thailand, and a lot of the book was based on my experiences in Thailand. Of course, if I couldn't admit that the CIA was in Thailand, then there was no point to the book.

I pointed out that the Thai authorities had claimed in their newspapers that they had relationships with the CIA. Pictures of the CIA station chief appeared in the press.

And ultimately, they relented.

UNGAR: So, they relented on that. But did they relent on all 397 deletions?

MCGEHEE: No. I had to reword some phrases. And then it ultimately came down to about 50 or 60 major deletions.

Then -- this was the first version. Now I could go look for a publisher. Finally, Sheridan Square agreed to publish the book. But they wanted the book in autobiographical form. It had written it in sort of legalese form. So I began writing each chapter and submitting it to the agency. In the first chapter, they began reclassifying everything that they had declassified in the first version. And I pointed out to them that, under the law that they were operating on, that they may not reclassify information once it has been declassified and released to the public.

UNGAR: Why would they have been reclassifying things? Just the way you expressed it the second time was more embarrassing to the agency?

MCGEHEE: No. They claimed that in declassifying it the first time, they had made mistakes. I finally appealed to the Deputy Director of Central Intelligence, Admiral Robert Inman; and he overturned the board in every one of the eight cases.

However, I then submitted chapter three. Well, chapter three, they said I couldn't use any of it. And their argument was that the agency could not admit that it was in the Philippines or in Japan, where I had been stationed at that time.

UNGAR: What was the basis of your argument with the agency over that?

MCGEHEE: Oh, they had approved a book by E. Howard Hunt that had talked not only about being in Japan and in the Philip-

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pines, but he very explicitly explained what he had been doing for the CIA in that country.

So I went to the Washington Post, and the Washington Post wrote a long editorial saying that "CIA veteran decries efforts to reclassify information in his book. This public embarrassment finally forced the agency to be realistic. And we worked over every single deletion from that point on. And finally the agency said, "All right. You can go with this version."

However, since that time, I have written two articles for The Nation, on request from the editor of The Nation. And I'm afraid now to submit those to the agency. Because if I do, I fear that they're going to play the same games on me that they have played before and try to reclassify all that information that they had declassified in the past. And if they do that, then it jeopardizes my ability to speak out.

UNGAR: Mr. McGehee, how long did this whole process take?

MCGEHEE: From the submission of the initial manuscript to the approval for the final manuscript, it had taken two years.

UNGAR: Did you feel there was -- was there any reason you were singled out for this sort of treatment?

MCGEHEE: Oh, I don't think I was singled out. I think any agency officer who's writing a negative book about the CIA is going to receive the same treatment. The agency made no bones about it. They just weren't going to let me write that book.

UNGAR: So you think if you had been writing a book dealing with the same things, but being more generous to the agency, you'd have had different treatment.

MCGEHEE: I would have had completely different treatment.

One thing I should mention is the agency has absolutely no memory. If I come in with a book tomorrow and they've approved something yesterday, they don't recall anything that they've approved yesterday. They can go ahead and try to reclassify everything. And then I must prove that they have declassified that information in the past or that that information is not classified. So it's completely capricious.

If any information is embarrassing, shows them doing immoral things, they'll classify it.

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UNGAR: Ralph McGehee is the author of "Deadly Deceits: My 25 Years in the CIA," published by Sheridan Square Publications in New York.

George Carver is also a retired CIA official, who worked at a much higher level as special assistant to three Directors of Central Intelligence. He believes the new executive order is wise.

GEORGE CARVER: Any good idea can be ruined by excess. But I think that those who have had official access to classified information, I think requiring them to submit future public utterances for some kind of sensible review, rather than giving them a unilateral personal right to declassify, is an eminently defensible concept.

UNGAR: Why? Why is that necessary to do that?

CARVER: Because the right to classify and the kind of judgments that are necessary in deciding whether something can be safely put in the public domain is, to my belief, an institutional right and responsibility vested in the government as an institution. It is not a private right that someone takes with them when they leave government employment after, during the course of said employment, having had access to highly classified information.

I hence have some trouble with arguments that some of my former colleagues have made saying, "Oh, well. It was perfectly all right for me to publish that article because there was nothing classified in it." Well, that's a determination that, so far as I'm concerned, is really not theirs to make.

UNGAR: If all this is in the hands of the government, to decide what people can say and what they can't, can't you imagine people sort of overprotecting information and kind of giving themselves work and importance by making what are objectively the wrong decisions about a lot of this information?

CARVER: What I'm trying to say is that I feel that, obviously, a system can be made unworkable if it's not managed with good sense. And certainly there is the tendency or risk of the government's overclassifying things or the people in government who are operating in such a program being foolish or petty or vindictive, etcetera.

I think, however, on the other side, that there is --the former, to my mind, is a theoretical danger that must be guarded against. On the other hand, you have, I think, a number of instances where former high government officials, or not so high government officials with access to highly classified

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information, for reasons of their own, either because they disapprove of some policy or they feel that, gee, this should be in the public domain anyway, reveal secrets that really should merit continued protection.

I can think of several instances where collection systems, collection methods, contacts, or activities that are now in train, or even personal associations going back over a number of years, have been brought into the public domain in ways that I regard as damaging, and which have a very decided chilling effect on the willingness of foreign liaison and other services, or even foreign individuals, to extend cooperation with the U.S. Government because of their questioning of our ability to protect their secrets. And I consider that quite damaging, indeed.

UNGAR: I guess I'm asking this. Even if there is a certain degree of problem, are we trying to deal with a fly with a bazooka?

CARVER: On the whole, I don't think so. I think there is, of course, that risk. But I believe that some measure or some manner of screening and imposing or reminding former government officials who had access to highly sensitive information of their continuing obligation is a necessary brake on the ingrained American penchant to run off at the mouth under any and all circumstances and with minimal provocation.

UNGAR: Former CIA official George Carver, now a senior fellow at the Center for Strategic and International Studies at Georgetown University.

Can opponents of the executive order do anything about it?

Again, Anthony Lewis of the New York Times.

LEWIS: There's always something that can be done in our democracy. People can make a noise. I'm not -- if you ask me am I very hopeful? No. Because when you mention intelligence secrets, it has a sort of dread sound to it. And members of the public and judges shy away: "We don't want to get mixed up in that. Who knows what it's all about?"

The body that ought to be making a noise, and is grumbling a little bit, is Congress. There are some members of Congress who are bothered by it. But if you ask me whether I think Congress will say nay in the end, I'm not very optimistic, because of the mystique of intelligence.

UNGAR: There is always the hope, I suppose, that the President might change his mind, might rescind the executive order.

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LEWIS: Or some other President.

WILLARD: I don't think this has been a partisan political issue over the past.

UNGAR: Finally, again, Richard Willard of the Justice Department.

WILLARD: Every President has been concerned about leaks of classified information, including President Carter, including President Johnson and President Kennedy. It has been a phenomenon that has not been cyclical, but has been rather steady over the past 10 to 20 years. The problem is that we haven't come up with a solution for it. No Administration has been able to mount an effective enforcement program.

While we don't think this directive will cause the problem to go away overnight, we do think that it will strengthen the enforcement program and, over time, give us some better results.

UNGAR: That's NPR Dateline for today.

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